

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 10664 OF 2005

-

Dated: 16-11-2005

-

Between:

M/s Azam Foods Products Pvt., Ltd.,

Rep. By its Managing Director,

Mohd. Azam r/o Jadcherla. ...Petitioner

A N D

1. The Chairman, Andhra Bank, Hyderabad

and Others

...Respondents

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

-

W.P.No. 10664 OF 2005

-

ORDER :

-

1. M/s Azam Foods Products Pvt., Ltd., represented by its Managing Director Mohd. Azam has filed this writ petition with a prayer to issue a writ, order or direction more particularly one in the nature of writ of mandamus directing the Chairman, Andhra Bank, Hyderabad-1st respondent to dispose of the representation dated 13-1-2005

considering the entire material available on record by declaring the action of General Manager, Andhra Bank, Hyderabad-4th respondent in issuing letter dated 19-04-2005 as arbitrary, illegal and unconstitutional.

2. The petitioner company availed term loan of Rs.1,36,00,000/- on 3-12-1999 apart from cash credit of Rs.50,00,000/- and key cash credit of Rs.30,00,000/- by hypothecating stock in trade, plant and machinery and against collateral securities of various properties worth of Rs.2,54,00,000/-. All the facilities given to the petitioner company became overdue and the term loan and the open cash credit came to be rescheduled from time to time. The cash credit limit of Rs.50,00,000/- has been enhanced periodically upto a limit of Rs.1,20,00,000/-. Because of some unforeseen circumstances, according to the petitioner company, it was unable to pay the installments due. By letter dated 29-10-2004 the Managing Director of the petitioner company requested the Branch Manager, Andhra Bank, Jedcherla to permit the company to sell the secured property of about Ac.20-00 of land. The company undertook to deposit the sale proceeds of the said land to the credit of the loan account by letter dated 10-11-2004. The Branch Manager, Andhra Bank, Jedcherla-2nd respondent had consented for releasing collateral security subject to certain terms and conditions. As per the terms and conditions stipulated in the said letter, the petitioner company had to deposit a sum of Rs.50,00,000/-, apart from payment of Rs.11.83 lakhs towards term loan and Rs.20,00,000/- towards OCC. The petitioner company sought for clarification from 2nd respondent by letter dated 09-12-2004 with regard to terms and conditions. The 2nd respondent by letter dated 20-12-2004 demanded the petitioner company to make payment of Rs.11.83 lakhs towards term loan and Rs.20,00,000/- towards OCC liability. According to the petitioner company, the 3rd respondent had collected the bill books and locked the doors of the company and retained the keys in the month of November, 2004. On 13-1-2005 the petitioner company presented representation to the 1st respondent. The 3rd respondent handed over the keys and bill books to the petitioner company on 29-1-2005 in the presence of the Andhra Bank Manager, Mahaboobnagar Branch. On 16-02-2005, a letter dated 8-2-2005 came to be served on the petitioner company demanding submission of stock statement, MSOD from October, 2004 onwards and payment of overdues by 16-02-2005. On 22-2-2005 the 3rd respondent seized the stock in the store room of the Mill premises of petitioner company by conducting inventory in the

presence of sarpanch and other Ward Members of Gollapalli village. On 23-2-2005 the 3rd respondent issued demand notice to repay the entire amount of Rs.1,51,17,388 with interest on or before 12-3-2005. Thereupon the petitioner company filed W.P.No.4804 of 2005 assailing the action of the respondents in taking coercive steps pending its representation dated 13-01-2005. The said writ petition came to be disposed of on 14-03-2005 with a direction to the respondents to consider the representation of the petitioner company within three weeks from the date of receipt of a copy of the order. 4th respondent by letter No. 679/11/1549 issued notice to the petitioner company and the guarantors calling upon them to pay entire amount of Rs.2,59,94,500-28 within a period of 60 days. Thereupon the petitioner company filed W.P.No.9203 of 2005. The said writ petition came to be disposed of on 29-04-2005 granting liberty to the petitioner to raise the objections under Section 3-A of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. The representation dated 13-01-2005 came to be considered and necessary orders came to be passed and communicated to the petitioner company. The present writ petition has been filed seeking writ of Mandamus to the 1st respondent to consider its representation dated 13-1-2005. For better understanding of the grievance of the petitioner company, I deem it appropriate to refer paras 11 and 12 of the writ affidavit and it is thus;

“It is submitted that the 3rd respondent, having failed in his attempts to see that his threat to close down my Mill would not be fructified seems to have prevailed upon the 4th respondent to issue notice under Sec. 13(ii) of Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act 2002 (herein after called “The Act”). The 4th Respondent by letter NO. 679/11/1549 has issued notice to the petitioner company and the guarantors who are no other than my son. Calling upon us to pay the entire amount of Rs. 2,59,94,500-28 Ps within a period of 60 days failing which the Bank would take measures against the property Hypothecated Mortgaged to the Bank to recover the amount as per the provisions of the Act. The proposed steps were taking possession of the secured assets and management of the secured assets including transfer by way of Lease, Assignment or Sale. Further by the notice we were directed not to transfer by way of Sale, Lease or otherwise any of the secured assets without prior written consent of the Bank.

It is submitted that as the notice was not sustainable and as

the provisions of securitization were not applicable to the case, I was constrained to file W.P.No. 9203 of 2005. The writ petition was filed on 20-04-2005 after serving the copy on the standing counsel on 20-04-2005 the writ petition came up for hearing on 20-04-2005. On that day when the case was argued, the counsel representing the respondents had stated that eh representation dated 13-01-2005 had been disposed off and suppressing the said fact, I had filed the W.P.No.9203 of 2005. further, it was stated that by ordinance the Securitization Act had been amended. Therefore, the writ petition was posted to 27-04-2005. It is pertinent here that I was not aware of disposal of the representation as such I had not mentioned the Writ Petition. I received a letter dated 19-04-2005 issued by the 4th Respondent General Manager of the Bank on 20-04-2005 around 3-00 p.m. In the letter the 4th Respondent stated that after careful examination of my representation and after ascertaining the details from branch and zonal office the CMB has directed them to inform me that my representation could not be considered favourably. As the mill was not closed by the Manager and as I had stated falsely that it was locked by the Branch Manager and Assistant General Manager, the interest could not be waived. Further it was stated that unless and until the amount due is paid the operation of the account could not be allowed. Adding insult to the injury the earlier permission given for release of part of collateral security was withdrawn. I was further directed to approach the Branch Manager and Zonal Office for settlement of the account under Compromise Policy of the Bank”.

3. Respondents filed counter affidavit. 3rd respondent has sworn to counter affidavit filed on behalf of the respondents. It is stated in the counter affidavit that the term loan and the open as well as open cash credit account were declared as non-performing assets in accordance with the guidelines issued by the Reserve Bank of India on 21-02-2005 and the outstanding amount as on that date on account of term loan was Rs.1,06,325/- and on account of OCC limit, the outstanding was Rs.1,51,17,388/-. Since the petitioner company was not taking any steps towards repayments of loan, the bank was constrained to initiate proceedings No.26218/203, dated 23-02-2005 notifying the petitioner that the sale of the hypothecated stocks would be conducted on any day after 13-03-2005. The stocks of the petitioner company came to be seized under regular panchanama on 22-2-2005 in the presence of its representatives. The respondent bank has taken recourse to the

provisions of Securitization Act, 2002 and issued notice under Section 13(2) on 23-03-2005. The petitioner company filed W.P.No.9203 of 2005 which came to be disposed of on 29-04-2005 granting liberty to the petitioner to raise objections under Section 3-A of the Act. Pursuant thereto, the petitioner preferred objections on 09-05-2005 and the same were considered and disposed of on 18-05-2005. The representation of the petitioner dated 13-01-2005 was considered by the Chairman and Managing Director of the respondent bank and the decision was communicated to the petitioner company on 19-04-2005. Since there was a change in the incumbency of the Chairman and Managing Director and in view of the same, the issue was once again placed before the new incumbent and pursuant thereto, the present Chairman and Managing Director of the Bank through proceedings dated 8-7-2005 has disposed of the representation dated 13-01-2005 preferred by the writ petitioner company. I deem it appropriate to refer para 14 of the counter affidavit and it is thus:

“I further submit that while the matter stood thus, there was a change in the incumbency of the Chairman and Managing Director and in view of the same, the issue was once again placed before the new incumbent and pursuant thereto the present Chairman and Managing Director through proceedings dated 8-7-2005 has disposed of the representation dated 13-1-2005 preferred by the writ petitioner. I further submit that in accordance with the communication dated 8-7-2005, the petitioner was communicated the stand of the Bank with regard to his grievance as under”.

-

4. In nutshell the plea of the respondents is that the representation of the petitioner company has been considered by the 1st respondent and the decision has been communicated to the petitioner company and thus the writ petition has become infructuous.

5. The petitioner filed reply affidavit. Most of the averments in the reply affidavit relate to the incident that precede with the representation dated 13-01-2005 and therefore, they are not required to be elaborately dealt with.

6. Heard learned counsel for the petitioner and learned standing counsel appearing

for the respondents.

7. Learned counsel for the petitioner submits that the action of the respondent-Bank in not permitting the petitioner company to sell the secured properties in the circumstances of the case is arbitrary and illegal. He further submits that the representation dated 13-01-2005 submitted by the petitioner company is not properly considered and therefore, a Mandamus is required to be given to the 1st respondent to consider the representation in proper perspective and pass appropriate orders. A further submission has been made that the action of the 3rd respondent in seizing the stocks is highly unjustified and the transactions in the accounts of the petitioner company are not properly made by the respondent Bank. Various other contentions have been made relating to the events that preceded the representation dated 13-01-2005.

8. Learned standing counsel appearing for the respondent-Bank submits that since the representation of the petitioner has in the instant writ petition been considered by the 1st respondent and necessary orders have been passed, the writ petition has become infructuous.

9. For better understanding of the rival contentions of the parties, I deem it appropriate to extract prayer sought for by the petitioner in the writ petition and it is thus:

“For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue Writ, Order or direction, more specially a Writ of Mandamus or any other appropriate Writ directing the 1st Respondent only to dispose of the representation dated 13-01-2005 after personally considering the entire material available on record by declaring the action of the 4th respondent in issuing letter dated 19-04-2005 in the place of the 1st Respondent without effectively considering the representation dated 13-01-2005 as arbitrary illegal and unconstitutional and pass such other order or orders as this Hon’ble Court may deem fit and proper under the circumstances of the case”.

10. Writ of Mandamus lies to secure the performance of a public or a statutory duty. The Courts always retained the discretion to withhold the remedy where it would not be in the interest of justice to grant it. It is also to be noticed that the statutory duty imposed on the public authorities may not be of discretionary character. A distinction

had always been drawn between the public duties enforceable by Mandamus that are statutory and duties arising merely from contract. Contractual duties are enforceable as matters of private law by ordinary contractual remedies such as damages, injunction, specific performance and declaration. A Mandamus can issue, for instance, to an official of a society to compel him to carry out the terms of the statute under or by which the society is constituted or governed and also to companies or corporations to carry out duties placed on them by the statutes authorizing them undertaking. On contractual matters, even in respect of public bodies, the principle of judicial review has got limited application. The interpretation and implementation of a clause in a contract cannot be the subject matter of a writ petition.

11. It is explicit from the relief sought for as extracted above, the petitioner company seeks direction to the 1st respondent to consider the representation dated 13-01-2005. The respondents have taken a specific stand that the representation of the petitioner company has been considered by the 1st respondent and the decision has been communicated to the petitioner company. A copy of the proceedings dated 8-7-2005 has been placed on record. It is suffice to refer the relevant portion of the proceeding dated 8-7-2005 issued by the 1st respondent and it is thus:

“Notwithstanding the facts set out above, on a reconsideration of your representation dated 13th January, 2005, I wish to state that the Bank would be willing to give further and final opportunity to you to settle the dues to the Bank, under the following arrangements without prejudice to our contentions and rights to recover the dues as per law provided you come up with concrete and time bound proposal as under:

3.1. We may consider releasing the seized stocks on payment of its value by your company as per valuation to be got conducted by an approved Valuer on the Bank's panel.

3.2. The consent earlier given by the Branch vide its letter dated 18th January, 2005 for the Bank releasing a part of the collateral securities held on your company making payment of rs. 50 lacs on or before 31st January, 2005 and which stood withdrawn by the Bank's letter dated 19th April, 2005 could be revived provided you furnish your undertaking to pay the amount of Rs. 50 lacs on or before the 10th August, 2005.

3.3. For the remaining dues after education of liabilities as per para 3.1 and 3.2 above, you may submit your concrete and time bound proposal for settlement under compromise terms acceptable to the Bank as per the Bank's Compromise Policy.

You may submit your response on the above to the Branch and Zonal Office on or before 23rd July, 2005".

12. Since 1st respondent has considered the representation dated 13-01-2005 and communicated the decision to the petitioner company under letter dated 23rd July, 2005, the writ petition has practically becomes infructuous.

13. Learned counsel for the petitioner company tries to convince the Court the conditions imposed by the respondent Bank are onerous. I do not see any substance in this contention, since it is well settled law that while exercising power of judicial review the eCourt is mere concerned with the decision making process than the merit of the decision itself. The petitioner company availed various facilities such as term loan, OCC and KCC in the year 1999, it did not stick to the schedule of repayment and therefore, the repayment came to be rescheduled and even then the petitioner company failed to liquidate its liability. Therefore, the respondents bank proceeded to seize the stocks in accordance with the terms and conditions of loan agreement. In that view of the matter, the action of the respondent-Bank cannot be found fault.

14. The writ petition is devoid of merit and accordingly, the same is hereby dismissed. No order as to costs.

Justice B.Seshasayana Reddy,

16th November, 2005

KM

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

-

W.P.No. 10664 OF 2005

-

14th November, 2005.

-